

REMARKS

The present application has been reviewed in light of the Office Action dated August 29, 2007. Claims 1, 4-6, 10-11, and 21-28 are currently pending, claims 2-3, 7, and 12-20 having been previously cancelled. By the present Amendment, independent claim 1 has been amended, claims 8-9 have been cancelled, and new claims 21-28 have been added for consideration. In light of the amendments made herein and the following remarks, reconsideration and allowance of the present application are respectfully requested.

In the Office Action, the Examiner indicated that the drawings filed on July 6, 2004 were objected to. In a telephone conference held with the Examiner on October 30, 2007, the Examiner indicated that the objection was a clerical error, and that the drawings were in fact acceptable. Accordingly, withdrawal of the objection to the drawings is respectfully requested.

Claims 1, 4-6, and 10-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,439,467 to Benderev *et al.* (hereinafter "Benderev") in view of U.S. Patent No. 4,635,637 to Schreiber (hereinafter "Schreiber"). The rejection of claims 1, 4-6 and 10-11, as being unpatentable over Benderev in view of Schreiber, is respectfully traversed.

Claim 1, as amended herein, recites, an instrument kit comprising, *inter alia*, at least one template including an elongate body defining X, Y and Z axes, the at least one template defining a longitudinal axis and further including attachment structure formed at a proximal end thereof; and a handle having receiving structure formed at a distal end thereof corresponding in

configuration to the attachment structure of the at least one template, the receiving structure being configured to selectively receive the attachment structure such that the at least one template is releasably engagable with the handle.

Benderev relates to a suture passer 105 including a handle 110, a probe 115, a probe guide 125, (*see* col. 4, lines 43-45), and a support 135 which acts as a transition member from handle 110 to support the probe guide 125. (*See id.* at lines 66-68). In the Office Action, suture passer 105 was characterized as a “template”, and it was asserted that the “template” 105 of Benderev discloses every element recited in claim 1 but for having “a height along the Z-axis and a width along the Y-axis, the width being substantially less than the height” and including an atraumatic tip with “a distal end surface defining a dimple formed therein that is configured and adapted to engage a fastener in order to facilitate driving of the fastener into underlying tissue.” Schreiber was relied upon for the disclosure of these concepts.

Even if it were to be assumed, *arguendo*, that the characterization of suture passer 105 as the template recited in independent claim 1 was proper, the “template” disclosed in Benderev fails to meet every element recited in independent claim 1 as amended. Benderev discloses that support 135 is “mounted” to handle 110, (*id.* at line 60), and that probe guide 125 is “fixed” to support 135. (Col. 5, lines 3-4). As such, handle 110 is not releasably engagable with the remainder of the instrument.

Consequently, Applicant respectfully submits that Benderev fails to disclose or suggest an instrument kit comprising at least one template including attachment structure and “a handle having receiving structure formed at a distal end thereof corresponding in configuration to the attachment structure of the at least one template, the receiving structure being configured to selectively receive the attachment structure such that the at least one template is releasably engagable with the handle,” as recited in amended independent claim 1. (Emphasis added). Incorporating the structural features purportedly disclosed in Schreiber fails to cure this deficiency.

Schreiber relates to a surgical suture 10 and a delivery system 40. Schreiber fails to disclose any handle, much less a handle as recited in claim 1. Accordingly, Applicant respectfully submits that Schreiber fails to cure the deficiencies of Benderev in that the combination of Benderev in view of Schreiber fails to render obvious an instrument kit comprising, *inter alia*, at least one template including an elongate body defining X, Y and Z axes, the at least one template defining a longitudinal axis and further including attachment structure formed at a proximal end thereof; and a handle having receiving structure formed at a distal end thereof corresponding in configuration to the attachment structure of the at least one template, the receiving structure being configured to selectively receive the attachment structure such that the at least one template is releasably engagable with the handle, as recited in claim 1.

For at least this reason, *inter alia*, Applicant respectfully submits that Benderev in view of Schreiber fails to disclose or suggest each and every element recited in amended independent claim 1, and therefore, that amended independent claim 1 is allowable under 35 U.S.C. § 103(a) over Benderev in view of Schreiber.

As claims 4-6 and 10-11 depend either directly or indirectly from claim 1 and contain all of the features of claim 1, for at least the reasons discussed above with respect to claim 1, *inter alia*, Applicant respectfully submits that claims 4-6 and 10-11 are also allowable under 35 U.S.C. § 103(a) over Benderev in view of Schreiber.

Claims 8-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Benderev in view of Schreiber and further in view of U.S. Patent No. 3,842,824 to Neufeld (hereinafter "Neufeld"). As indicated above, claims 8-9 have been cancelled herein. Accordingly, the rejection of claims 8-9 as being unpatentable over Benderev in view of Schreiber and further in view of Neufeld, under 35 U.S.C. § 103(a), has been rendered moot and should be withdrawn.

Applicant has added new claims 21-28 for consideration herein. As discussed above, independent claim 1 is allowable. Given the direct or indirect dependence of claims 21-27 from claim 1, for at least the reasons discussed above with respect to claim 1, *inter alia*, Applicant respectfully submits that claims 21-27 are also allowable.

Additionally, as discussed above with respect to claim 1, the prior art of record fails to disclose or suggest an instrument kit comprising at least one template including "attachment

structure formed at a proximal end thereof” and “a handle having receiving structure formed at a distal end thereof corresponding in configuration to the attachment structure of the at least one template, the receiving structure being configured to selectively receive the attachment structure such that the at least one template is releasably engagable with the handle.” Claim 28 also recites these structural elements. Accordingly, for at least this reason, Applicant respectfully submits that claim 28 is also allowable.

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, the Examiner is respectfully requested to telephone Applicant’s undersigned representative at the number indicated below.

In view of the foregoing amendments and remarks, reconsideration and allowance of pending claims 1, 4-6, 10-11, and 21-28 is earnestly solicited.

Respectfully submitted,



Francesco Sardone
Reg. No. 47,918
Attorney for Applicant(s)

CARTER, DeLUCA, FARRELL & SCHMIDT, LLP
445 Broad Hollow Road, Suite 225
Melville, New York 11747
Phone: (631) 501-5700
Fax: (631) 501-3526
FS/nr